

COPY**ORIGINAL
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APR 19 2006

E-Filing RICHARD W. WIEGONG
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**MMC**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**C 06 2643**DIOPTICS MEDICAL PRODUCTS, INC.,
a California corporation,

Plaintiff,

v.

BEI FRANCHISING, INC.,
a Michigan corporation,

Defendant.

CASE NO. _____

**COMPLAINT FOR TRADEMARK
INFRINGEMENT, TRADEMARK
CANCELLATION, AND UNFAIR
COMPETITION****DEMAND FOR JURY TRIAL**Plaintiff Dioptics Medical Products, Inc. claims for relief against defendant BEI
Franchising, Inc., as follows:**PARTIES**

1. Dioptics is, and at all times material hereto was, a corporation organized and existing under the laws of the State of California with its principal place of business in San Luis Obispo, California.

2. On information and belief, BEI Franchising was and is a corporation organized and existing under the laws of the State of Michigan with its principal place of business in Kalamazoo, Michigan.

JURISDICTION AND VENUE

3. The court's jurisdiction arises under 28 U.S.C. §§1331 and 1332. The court has subject matter jurisdiction pursuant to the Lanham Act, 15 U.S.C. §§ 1051 *et seq.* The court has subject matter jurisdiction over the cancellation pursuant to 15 U.S.C. § 1119, see *Informix Software v. Oracle*, 927 F. Supp. 1283, 1286-87 (N.D. Cal. 1986).

4. Venue is proper in this federal district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b) in that, on information and belief, BEI Franchising is a franchisor that offers to enter franchise agreements or relationships nationwide and in this judicial district. Further, BEI Franchising operates an interactive website accessible in this judicial district at www.beipolarclips.com advertising BEI Franchising's products and franchise opportunities to persons nationwide and in this judicial district. Said website includes acts of infringement and offers for sale of infringing goods and services accessible in California and in this judicial district.

INTRADISTRICT ASSIGNMENT

5. This is an intellectual property action. It should be assigned on a district-wide basis in accordance with Local Rule 3-2.

INFRINGEMENT OF THE DIOPTICS MARKS

6. Dioptics is the owner of several registered trademarks incorporating "Polar" in Trademark International Classification Code 009. These include Registration Numbers 2,148,491 ("POLAR-EYES") (Ex. A), 2,759,604 ("POLAROPTICS") (Ex. B), 2,759,616 ("POLAR SHIELD") (Ex. C), 2,677,292 ("POLARTX") (Ex. D), 2,849,220 ("POLAR AB") (Ex. E), 2,849,473 ("POLARAMIC") (Ex. F), 2,849,474 ("POLARPERFECT") (Ex. G), 2,902,377 ("POLARXTREME") (Ex. H), 3,021,936 ("POLARA") (Ex. I), and 3,030,416 ("POLARÉ") (Ex. J). A true and correct copy of the registrations for POLAR-EYES, POLAROPTICS, POLAR SHIELD, POLARTX, POLAR AB, POLARAMIC, POLARPERFECT, and POLAR EXTREME are attached hereto as Exhibits A-H. A true and correct copy of a USPTO Trademark Electronic Search System search showing Dioptics's POLARA and POLARÉ registrations are attached hereto as Exhibits I and J.

1 7. Dioptics also is the applicant of record concerning several additional marks
2 incorporating "Polar" in Trademark International Classification Code 009. These consist of
3 Application Serial Numbers 78/310,612 ("POLARWRAP") (Ex. K) and 78/310,631
4 ("POLARCOMFORT") (Ex. L). A true and correct copy of a USPTO Trademark Electronic
5 Search System search showing Dioptics's POLARWRAP and POLARCOMFORT registrations
6 are attached hereto as Exhibits K and L.

7 8. Dioptics also owns common-law rights in a variety of marks incorporating
8 "Polar." These consist of "SolarShield Polarized," used in connection with Dioptics's line of
9 sunglasses and eyewear products.

10 9. All of Dioptics's foregoing registered, applied-for and common law marks,
11 collectively, are referred to herein as the "Dioptics Marks."

12 10. The earliest registered Dioptics Mark, POLAR-EYES, Reg. No. 2,148,491, dates
13 to 1998.

14 11. Dioptics has expended substantial resources to advertise and promote the sale of
15 sunglasses and other eyewear products under the Dioptics Marks. By reason of this
16 advertisement, sale, offering for sale, promotion and use of the Dioptics Marks, the Dioptics
17 Marks have come to be recognized as signifying Dioptics and Dioptics's products and services.
18 Dioptics has built up extensive goodwill in the Dioptics Marks. Indeed, since 1979, Dioptics has
19 sold over 50 million products using one or more of the Dioptics Marks.

20 12. Notwithstanding Dioptics's prior rights in and to the Dioptics Marks, BEI
21 Franchising has advertised, sold, offered for sale, promoted, and used the marks POLAR CLIPS,
22 Reg. No. 2,867,496 (Ex. M), BEI POLAR CLIPS, Reg. No. 2,880,072 (word mark) (Ex. N), and
23 BEI POLAR CLIPS, Application Serial No. 78/671,357 (graphic mark) (Ex. O) (collectively, the
24 "BEI Marks"), in the same Trademark International Classification Code 009 as the Dioptics
25 Marks connection with sunglasses and other eyewear products. A true and correct copy of BEI's
26 registrations are attached hereto as Exhibits M and N. A true and correct copy of the USPTO
27 Trademark Electronic Search System search showing applications for the BEI Mark is attached
28 hereto as Exhibit O.

1 13. BEI Franchising's use of the BEI Marks in connection with its products is
2 confusingly similar to the previously used and not abandoned Dioptics Marks. BEI Franchising's
3 use of the BEI Marks in connection with sunglasses or other eyewear is calculated and likely to
4 cause confusion among purchasers concerning the source, ownership, or sponsorship of the goods
5 being sold by Dioptics and BEI Franchising. Such conduct will seriously damage Dioptics, its
6 business, and its goodwill.

7 **INFRINGEMENT OF THE DIOPTICS MARKS**

8 14. Dioptics incorporates Paragraphs 6 through 13 by reference.

9 15. Dioptics duly and legally filed for the Dioptics Marks beginning in 1998. Dioptics
10 uses the Dioptics Marks in connection with certain of its fit-over and clip-on sunglass styles.

11 16. BEI Franchising's sale of clip-on sunglasses under the BEI Marks is in violation of
12 the trademark laws of the United States and infringes the Dioptics Marks pursuant to 15 U.S.C.
13 §§ 1114, 1115, and 1125. The defendant's acts of infringement are likely to cause confusion,
14 mistake and to deceive others as to the affiliation, connection, and/or association of its products
15 with Dioptics's products.

16 17. By reason of BEI Franchising's wrongful acts, Dioptics has and will continue to
17 suffer damages to its business, reputation and goodwill. Dioptics believes these damages will
18 continue until such time as the defendant is enjoined from its wrongful conduct.

19 18. Dioptics is entitled to enjoin the defendant's acts of infringement pursuant to 15
20 U.S.C. § 1116. Dioptics alleges on information and belief that BEI Franchising will not
21 discontinue its acts of infringement unless and until ordered to do so by this Court. Dioptics has
22 no adequate remedy at law.

23 **PETITION FOR DECLARATION CANCELING THE REGISTERED BEI MARKS**

24 19. Dioptics incorporates paragraphs 6 through 13 by reference.

25 20. Dioptics duly and legally filed for the Dioptics Marks beginning in 1998. Dioptics
26 uses the Dioptics Marks in connection with certain of its fit-over and clip-on sunglass styles.

27 21. The BEI Marks are confusingly similar to the pre-existing Dioptics Marks, and
28 therefore should not have been registered by the United States Trademark Office.

22. BEI Franchising's sale of clip-on sunglasses under the BEI Marks is in violation of the trademark laws of the United States and infringes the Dioptics Marks pursuant to 15 U.S.C. §§ 1114, 1115, and 1125. The defendant's acts of infringement are likely to cause confusion, mistake and to deceive others as to the affiliation, connection, and/or association of its products with Dioptics's products.

23. Accordingly, the BEI Marks should not have been registered. The registered BEI Marks should be canceled and the pending applications denied registration pursuant to 15 U.S.C. § 1119.

UNFAIR COMPETITION – BUS. & PROF. CODE § 17200

24. Dioptics incorporates paragraphs 6 through 13 by reference.

25. BEI Franchising, by engaging in the conduct described herein, in the past has engaged in, and is currently committing and engaging in, unfair and unlawful business acts and practices, as defined in California Business and Professions Code Section 17200 *et seq.*

26. BEI Franchising's conduct has harmed and confused Dioptics and the general public. The harm to Dioptics outweighs the utility of BEI Franchising's acts and practices.

27. As a direct and proximate result of BEI Franchising's unfair competition, Dioptics has suffered injury to its business.

UNFAIR COMPETITION – LANHAM ACT

28. Dioptics incorporates paragraphs 6 through 13 by reference.

29. BEI Franchising, by engaging in the conduct described herein, in the past has engaged in, and is currently committing and engaging in, unfair and unlawful business acts and practices, as defined in Section 43 of the Lanham Act, Title 15, U.S. Code.

30. BEI Franchising, Inc.'s conduct has harmed and confused Dioptics and the general public. The harm to Dioptics outweighs the utility of BEI Franchising's acts and practices.

31. As a direct and proximate result of BEI Franchising's unfair competition, Dioptics has suffered injury to its business.

PRAYER FOR RELIEF

1 WHEREFORE, Dioptics Medical Products, Inc. requests entry of judgment in its favor
2 and against BEI Franchising as follows:

3 (a) Declaring that BEI Franchising has infringed the Dioptics Marks;

4 (b) Preliminarily and permanently enjoining BEI Franchising, its officers, agents,
5 employees, and those acting in privity with them, from further infringement and/or contributory
6 infringement of the Dioptics Marks, and from engaging in further acts of unfair competition;

7 (c) Enjoining, pursuant to 15 U.S.C. § 1116, and restraining BEI Franchising and its
8 officers, agents, employees, and those acting in privity with them, from directly or indirectly
9 using the BEI Marks, or any other mark, word, or name similar to the Dioptics Marks which is
10 likely to cause confusion, mistake or to deceive;

11 (d) Canceling the registration of POLAR CLIPS, Reg. No. 2,867,496, and BEI
12 POLAR CLIPS, Reg. No. 2,880,072, and blocking the registration of BEI POLAR CLIPS,
13 Application Serial No. 78/671,357.

14 (e) Awarding damages according to proof; and

15 (f) Granting such other and further relief as the Court may deem just and proper.

16 Dated: April 19, 2006

Respectfully Submitted,

McDermott Will & Emery LLP

18
19 By: 

David S. Bloch
John A. Lee

20
21 Attorneys for Plaintiff
22 DIOPTICS MEDICAL PRODUCTS, INC.
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff DIOPTICS MEDICAL PRODUCTS, INC. hereby demands a trial by jury on all issues properly triable to a jury in this action.

Dated: April 19, 2006

Respectfully submitted,

McDermott Will & Emery LLP

By: 

David S. Bloch

John A. Lee

Attorneys for Plaintiff

DIOPTICS MEDICAL PRODUCTS, INC.

CERTIFICATION OF INTERESTED ENTITIES OR PARTIES

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: April 19, 2006

Respectfully submitted,

McDermott Will & Emery LLP

By: 

David S. Bloch

John A. Lee

Attorneys for Plaintiff

DIOPTICS MEDICAL PRODUCTS, INC.

EXHIBIT A

1357174



THE UNITED STATES OF AMERICA

**TO ALL TO WHOM THESE PRESENTS SHALL COME:
UNITED STATES DEPARTMENT OF COMMERCE**

United States Patent and Trademark Office

August 18, 2005

**THE ATTACHED U.S. TRADEMARK REGISTRATION 2,148,491 IS
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE.**

REGISTERED FOR A TERM OF 10 YEARS FROM *April 07, 1998*

SECTION 8

SAID RECORDS SHOW TITLE TO BE IN:

DIOPTICS MEDICAL PRODUCTS, INC.

By Authority of the

**Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office**



M. K. CARTER

Certifying Officer

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

United States Patent and Trademark Office

Reg. No. 2,148,491

Registered Apr. 7, 1998

**TRADEMARK
PRINCIPAL REGISTER**



UNIQUE VISUAL CONCEPTS, INC. (OKLAHOMA CORPORATION)
515 SOUTH WILEY
FORT GIBSON, OK 74434

FOR: POLARIZED EYEGLASSES AND POLARIZED CONTACT LENSES FOR KIDS OR ADULTS' SUNGLASSES, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 6-15-1995; IN COMMERCE 6-15-1995.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "POLARIZE", APART FROM THE MARK AS SHOWN.

SER. NO. 74-701,707, FILED 7-17-1995.

FRANCES G. SMITH, EXAMINING ATTORNEY

EXHIBIT B



1357174

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME;

**UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office**

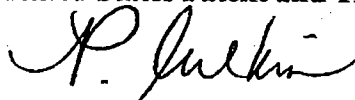
August 18, 2005

**THE ATTACHED U.S. TRADEMARK REGISTRATION 2,759,604 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.**

**REGISTERED FOR A TERM OF 10 YEARS FROM *September 02, 2003*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant***

**By Authority of the
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office**




**P. SWAIN
Certifying Officer**

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

United States Patent and Trademark Office

Reg. No. 2,759,604

Registered Sep. 2, 2003

**TRADEMARK
PRINCIPAL REGISTER**

POLAROPTICS

**DIOPTICS MEDICAL PRODUCTS, INC. (CALI-
FORNIA CORPORATION)
51 ZACA LANE
SAN LUIS OBISPO, CA 93401**

**NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "POLAR", APART FROM THE
MARK AS SHOWN.**

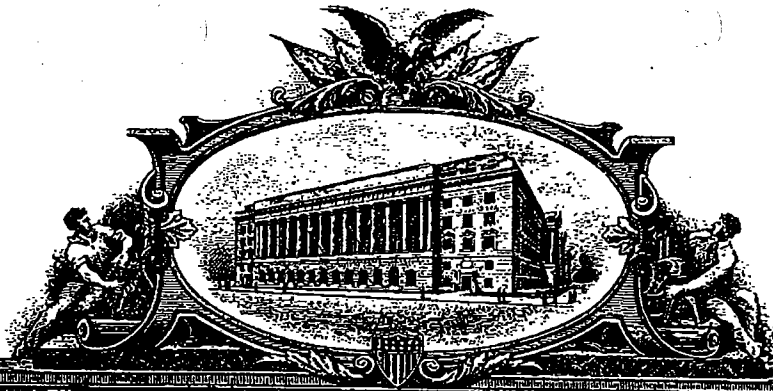
**FOR: SUNGLASSES, IN CLASS 9 (U.S. CLS. 21, 23,
26, 36 AND 38).**

SN 76-221,274, FILED 3-8-2001.

FIRST USE 2-1-2003; IN COMMERCE 2-1-2003.

**ALICE SUE CARRUTHERS, EXAMINING ATTOR-
NEY**

EXHIBIT C



1357174

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

**UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office**

August 18, 2005

**THE ATTACHED U.S. TRADEMARK REGISTRATION 2,759,616 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.**

**REGISTERED FOR A TERM OF 10 YEARS FROM *September 02, 2003*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant***

**By Authority of the
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office**

**P. SWAIN
Certifying Officer**



Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

United States Patent and Trademark Office

Reg. No. 2,759,616

Registered Sep. 2, 2003

**TRADEMARK
PRINCIPAL REGISTER**

POLAR SHIELD

**DIOPTICS MEDICAL PRODUCTS, INC. (CALI-
FORNIA CORPORATION)
51 ZACA LANE
SAN LUIS OBISPO, CA 93401**

**NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "POLAR", APART FROM THE
MARK AS SHOWN.**

**FOR: SUNGLASSES, IN CLASS 9 (U.S. CLS. 21, 23,
26, 36 AND 38).**

SN 76-223,076, FILED 3-12-2001.

FIRST USE 2-1-2003; IN COMMERCE 2-1-2003.

**ALICE SUE CARRUTHERS, EXAMINING ATTOR-
NEY**

EXHIBIT D

1357174

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

August 18, 2005

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,677,292 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *January 21, 2003*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office



H. L. Jackson
H. L. JACKSON
Certifying Officer

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

United States Patent and Trademark Office

Reg. No. 2,677,292

Registered Jan. 21, 2003

**TRADEMARK
PRINCIPAL REGISTER**

The logo for "polar tx" features the word "polar" in a lowercase, sans-serif font. A thick horizontal line is drawn beneath the letters "polar". The letters "tx" are positioned to the right of this line, with the "t" partially overlapping the line and the "x" positioned above it. The "tx" is also in a lowercase, sans-serif font.

**DIOPTICS MEDICAL PRODUCTS, INC. (CALI-
FORNIA CORPORATION)
51 ZACA LANE SUITE 150
SAN LUIS OBISPO, CA 93401**

FIRST USE 12-0-2001; IN COMMERCE 12-0-2001.

SER. NO. 76-358,003, FILED 1-14-2002.

**FOR: POLARIZED EYEGLOSS LENSES FOR USE
IN SUNGLASSES AND CLIP-ONS, IN CLASS 9 (U.S.
CLS. 21, 23, 26, 36 AND 38).**

PATRICIA JUDD, EXAMINING ATTORNEY

EXHIBIT E

1357174

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

August 18, 2005

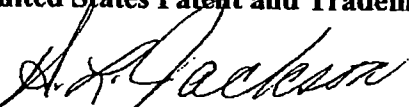
THE ATTACHED U.S. TRADEMARK REGISTRATION 2,849,220 IS
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE.

REGISTERED FOR A TERM OF 10 YEARS FROM *June 01, 2004*

SAID RECORDS SHOW TITLE TO BE IN:

DIOPTICS MEDICAL PRODUCTS
A CALIFORNIA CORPORATION

By Authority of the
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office


H. L. JACKSON
Certifying Officer



Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

Reg. No. 2,849,220

United States Patent and Trademark Office

Registered June 1, 2004

**TRADEMARK
PRINCIPAL REGISTER**

POLAR AB

**DIOPTICS MEDICAL PRODUCTS (CALIFORNIA
CORPORATION)
51 ZACA LANE SUITE 150
SAN LUIS OBISPO, CA 93401**

**THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.**

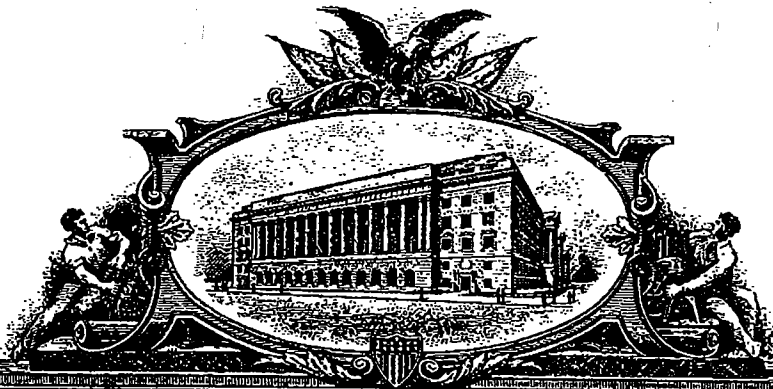
**FOR: POLARIZED EYEGGLASS LENS FOR USE IN
SUNGLASSES AND CLIPON SUNGLASSES, IN
CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).**

SN 78-108,230, FILED 2-12-2002

FIRST USE 5-1-2003; IN COMMERCE 5-1-2003.

TARAH HARDY, EXAMINING ATTORNEY

EXHIBIT F



1357174

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

August 18, 2005

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,849,473 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *June 01, 2004*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office



P. SWAIN

Certifying Officer

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

United States Patent and Trademark Office

Reg. No. 2,849,473

Registered June 1, 2004

**TRADEMARK
PRINCIPAL REGISTER**

POLARAMIC

**DIOPTICS MEDICAL PRODUCTS, INC. (CALI-
FORNIA CORPORATION)
51 ZACA LANE
SAN LUIS OBISPO, CA 93401**

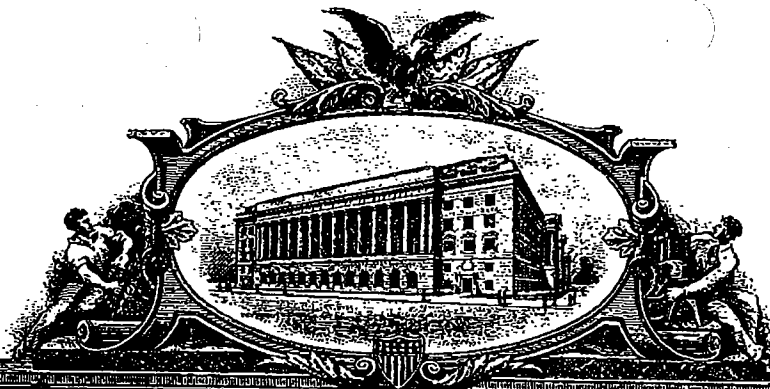
FIRST USE 2-2-2004; IN COMMERCE 2-2-2004.

SN 78-172,731, FILED 10-9-2002.

**FOR: SUNGLASSES, IN CLASS 9 (U.S. CLS. 21, 23,
26, 36 AND 38).**

HEATHER THOMPSON, EXAMINING ATTORNEY

EXHIBIT G



1357174

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME;

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office


August 18, 2005

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,849,474 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *June 01, 2004*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office




P. SWAIN
Certifying Officer

Int. CL: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

United States Patent and Trademark Office

Reg. No. 2,849,474

Registered June 1, 2004

**TRADEMARK
PRINCIPAL REGISTER**

POLARPERFECT

**DIOPTICS MEDICAL PRODUCTS, INC. (CALI-
FORNIA CORPORATION)
51 ZACA LANE
SAN LUIS OBISPO, CA 93401**

FIRST USE 2-2-2004; IN COMMERCE 2-2-2004.

SN 78-172,735, FILED 10-9-2002.

**FOR: SUNGLASSES, IN CLASS 9 (U.S. CLS. 21, 23,
26, 36 AND 38).**

HEATHER THOMPSON, EXAMINING ATTORNEY

EXHIBIT H

1357174

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME;

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

August 18, 2005

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,902,377 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *November 09, 2004*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office



E. Bornett
E. BORNETT

Certifying Officer

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

United States Patent and Trademark Office

Reg. No. 2,902,377

Registered Nov. 9, 2004

**TRADEMARK
PRINCIPAL REGISTER**

POLARXTREME

**DIOPTICS MEDICAL PRODUCTS, INC. (CALI-
FORNIA CORPORATION)
51 ZACA LANE
SAN LUIS OBISPO, CA 93401**

**FOR: READING GLASSES, SUNGLASSES, CLIP-
ON SUNGLASSES, EYEGLASS CASES, EYEGLASS
CHAINS, EYEGLASS CORDS, EYEGLASS CLEAN-**

**ING KITS COMPRISED OF EYEGLASS CLEANING
CLOTHS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).**

FIRST USE 5-1-2003; IN COMMERCE 8-1-2004.

SN 78-227,303, FILED 3-19-2003.

LINDA POWELL, EXAMINING ATTORNEY

EXHIBIT I



United States Patent and Trademark Office

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Trademarks > Trademark Electronic Search System(Tess)

TESS was last updated on Sat Apr 15 04:14:43 EDT 2006

TESS HOME NEW USER STRUCTURED FREE FORM BROWSE Dict SEARCH OG BOTTOM HELP PREV LIST CURR LIST
NEXT LIST FIRST DOC PREV DOC NEXT DOC LAST DOC

Please logout when you are done to release system resources allocated for you.

List At: OR to record: **Record 32 out of 132**

TARR Status ASSIGN Status TDR TTAB Status (Use the "Back" button of the Internet Browser to return to TESS)

POLARA

Word Mark	POLARA
Goods and Services	IC 009. US 021 023 026 036 038. G & S: Sunglasses. FIRST USE: 20050914. FIRST USE IN COMMERCE: 20050914
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Design Search Code	
Serial Number	78377353
Filing Date	March 2, 2004
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	December 21, 2004
Registration Number	3021936
Registration Date	November 29, 2005
Owner	(REGISTRANT) Dioptics Medical Products, Inc. CORPORATION CALIFORNIA 51 Zaca Lane San Luis Obispo CALIFORNIA 93401
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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POLARÉ

Word Mark	POLARÉ
Goods and Services	IC 009. US 021 023 026 036 038. G & S: Sunglasses. FIRST USE: 20050421. FIRST USE IN COMMERCE: 20050421
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Design Search Code	
Serial Number	78377345
Filing Date	March 2, 2004
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	Déceember 21, 2004
Registration Number	3030416
Registration Date	December 13, 2005
Owner	(REGISTRANT) Dioptics Medical Products, Inc. CORPORATION CALIFORNIA 51 Zaca Lane San Luis Obispo CALIFORNIA 93401
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Typed Drawing

Word Mark POLARWRAP
Goods and Services IC 009. US 021 023 026 036 038. G & S: Sunglasses, reading glasses, clip-on sunglasses, safety glasses, protective eyewear, eyeglass cases, eyeglass chains, eyeglass cords, eyeglass cleaning kits comprised of eyeglass cleaning cloths
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 78310612
Filing Date October 7, 2003
Current Filing Basis 1B
Original Filing Basis 1B
Published for Opposition September 27, 2005
Owner (APPLICANT) Dioptics Medical Products, Inc. CORPORATION CALIFORNIA 51 Zaca Lane, Suite 150 San Luis Obispo CALIFORNIA 93401
Prior Registrations 2148491;2217578;2677292;2759604;2759616;2849220;2849474;AND OTHERS
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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TARR Status **ASSIGN Status** **TDR** **TTAB Status** (Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

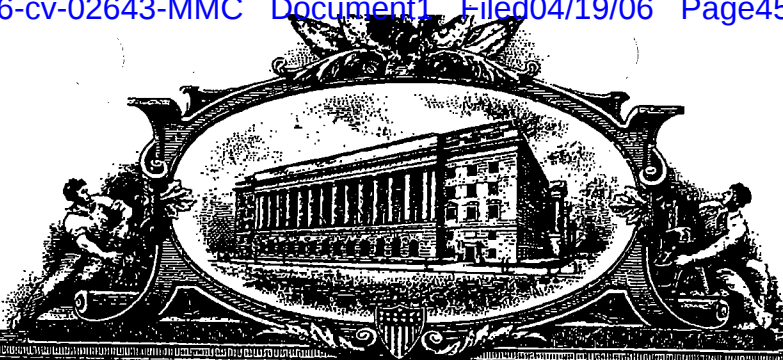
Word Mark POLARCOMFORT
Goods and Services IC 009. US 021 023 026 036 038. G & S: Sunglasses, reading glasses, clip-on sunglasses, safety glasses, protective eyewear, eyeglass cases, eyeglass chains, eyeglass cords, eyeglass cleaning kits comprised of eyeglass cleaning cloths. FIRST USE: 20050928. FIRST USE IN COMMERCE: 20050928
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 78310631
Filing Date October 7, 2003
Current Filing Basis 1B
Original Filing Basis 1B
Published for Opposition July 6, 2004
Owner (APPLICANT) Dioptrics Medical Products, Inc. CORPORATION CALIFORNIA 51 Zaca Lane, Suite 150 San Luis Obispo CALIFORNIA 93401
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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EXHIBIT M

1444454



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

March 24, 2006

**THE ATTACHED U.S. TRADEMARK REGISTRATION 2,867,496 IS
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REGISTERED FOR A TERM OF 10 YEARS FROM *July 27, 2004*

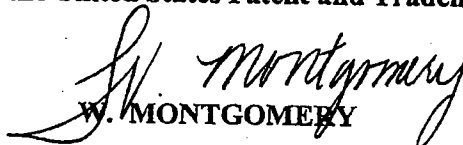
SAID RECORDS SHOW TITLE TO BE IN:

BEI FRANCHISING, INC.

A MICHIGAN CORPORATION

By Authority of the

**Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office**


W. MONTGOMERY
Certifying Officer



Int. Cls.: 7, 9, and 35

Prior U.S. Cls.: 13, 19, 21, 23, 26, 31, 34, 35, 36, 38,
100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,867,496

Registered July 27, 2004

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

POLAR CLIPS

PINTO PRODUCTS, INC. (MICHIGAN COR-
PORATION)
2525 MILLER ROAD
KALAMAZOO, MI 49001

FOR: RETAIL OUTLETS FEATURING CLIP-ON
SUNGLASSES, IN CLASS 35 (U.S. CLS. 100, 101 AND
102).

FOR: MACHINE USED TO MANUFACTURE
CLIP-ON SUNGLASSES, IN CLASS 7 (U.S. CLS. 13,
19, 21, 23, 31, 34 AND 35).

FIRST USE 3-1-2003; IN COMMERCE 3-1-2003.

FIRST USE 4-13-2004; IN COMMERCE 4-13-2004.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "CLIPS", APART FROM THE MARK
AS SHOWN.

FOR: CLIP-ON SUNGLASSES, IN CLASS 9 (U.S.
CLS. 21, 23, 26, 36 AND 38).

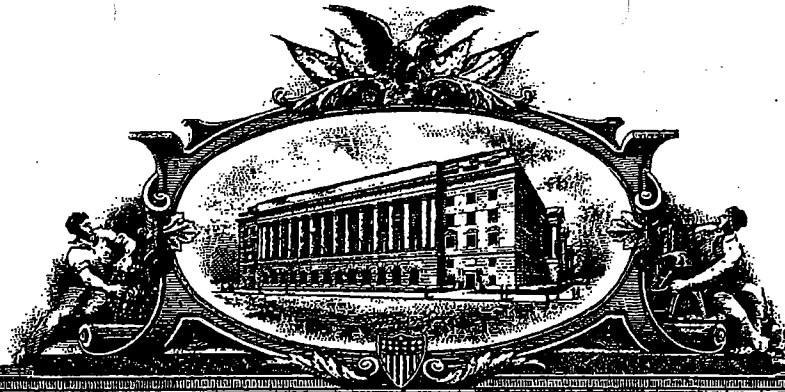
SN 76-461,796, FILED 10-21-2002.

FIRST USE 3-1-2003; IN COMMERCE 3-1-2003.

ANN LINNEHAN, EXAMINING ATTORNEY

EXHIBIT N

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THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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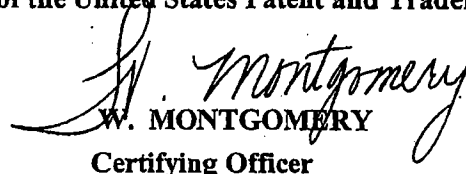
SAID RECORDS SHOW TITLE TO BE IN:

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W. MONTGOMERY
Certifying Officer



Int. Cls.: 7, 9, and 35

Prior U.S. Cls.: 13, 19, 21, 23, 26, 31, 34, 35, 36, 38,
100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,880,072

Registered Aug. 31, 2004

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

BEI POLAR CLIPS

PINTO PRODUCTS, INC. (MICHIGAN COR-
PORATION)
2525 MILLER ROAD
KALAMAZOO, MI 49001

FOR: MACHINE USED TO MANUFACTURE
CLIP-ON SUNGLASSES, IN CLASS 7 (U.S. CLS. 13,
19, 21, 23, 31, 34 AND 35).

FIRST USE 4-13-2004; IN COMMERCE 4-13-2004.

FOR: CLIP-ON SUNGLASSES, IN CLASS 9 (U.S.
CLS. 21, 23, 26, 36 AND 38).

FIRST USE 3-1-2003; IN COMMERCE 3-1-2003.

FOR: RETAIL OUTLETS FEATURING CLIP-ON
SUNGLASSES, IN CLASS 35 (U.S. CLS. 100, 101 AND
102).

FIRST USE 3-1-2003; IN COMMERCE 3-1-2003.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "CLIPS", APART FROM THE MARK
AS SHOWN.

SN 76-461,797, FILED 10-21-2002.

ANN LINNEHAN, EXAMINING ATTORNEY

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Word Mark
Goods and
Services

BEI POLAR CLIPS

IC 007. US 013 019 021 023 031 034 035. G & S: Machine used to manufacture clip-on sunglasses. FIRST USE: 20040413. FIRST USE IN COMMERCE: 20040413

IC 009. US 021 023 026 036 038. G & S: Clip-on sunglasses. FIRST USE: 20030301. FIRST USE IN COMMERCE: 20030301

IC 035. US 100 101 102. G & S: Retail outlets featuring clip-on sunglasses. FIRST USE: 20030301. FIRST USE IN COMMERCE: 20030301

Mark Drawing
Code

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search
Code

 01.05.03 - Sun representing a human face or an animal
 16.03.07 - Contact lenses; Eyeglasses; Frames, eyeglass; Glasses, eye; Glasses, safety; Goggles; Lenses, optical, and spectacle; Monocles; Safety goggles; Spectacles; Sunglasses
Serial Number

78671357

Filing Date

July 15, 2005

Current Filing
Basis

1A

Original Filing
Basis

1A

Owner

(APPLICANT) BEI Franchising, Inc. CORPORATION MICHIGAN 2525 Miller Road Kalamazoo MICHIGAN 49001

Attorney of
Record

Marisa D. Faunce, Esq.

Prior
Registrations

2867496;2880072

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CLIPS" APART FROM THE MARK AS SHOWN

Description of Mark The mark consists of the phrase BEI POLAR CLIPS with a sun that has a face and is wearing sunglasses.

Type of Mark TRADEMARK. SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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